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International Law Situations

With Solutions and Notes

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Situation III

NEUTRAL OBLIGATIONS

States X and Y are at war. Other states are neutral.

(*a*) State D in its proclamation of neutrality forbids entrance to its waters to all belligerent vessels except strictly private merchant vessels upon the surface.

(1) The *West Wind*, a passenger vessel belonging to a citizen of state X, having on board among its passengers 100 soldiers on its regular voyage along the coast passes within 3 miles of D and is there seized by a vessel of war of D and the vessel and soldiers are interned.

(2) The *Porpoise*, a submarine belonging to state Y, but engaged in merchant service, is caught in a net 1 mile offshore of D and enters a port of D in distress. The port authorities intern the submarine.

(3) The *East Wind*, a merchant vessel belonging to a private citizen of Y, is captured by a cruiser of X and a prize crew is put on board. The radio upon the *East Wind* becomes disabled and the vessel enters a port of D. The authorities of D intern the prize crew, allow the repairs, and release the *East Wind*.

(*b*) State E has merely declared that it would maintain its neutrality.

(1) The *Athens*, a merchant vessel owned by a citizen of state F, sails from a port of E, having cleared for its home port. En route and on the high seas the *Athens* meets war vessels of X and sells to these vessels the fuel and provisions which it has on board. The *Athens* then returns to state E and takes on board fuel and provisions to replace those sold.

(2) The *King*, one of the vessels of war of Y, enters a port of E and the commanding officer goes ashore and sends to and receives from the fleet outside through the regular radio station messages in regard to the war.

(3) The second day afterwards the *Prince*, another vessel from the fleet, enters the same port and its commanding officer sends and receives similar messages as well as ordinary cable messages.

States X and Y, when adversely affected, protest that their rights under the laws of neutrality have not been respected. Are the protests well grounded? Why?

SOLUTION

(*a*) (1) The protest of state X against the action of state D both as regards the removal of the soldiers and the internment of the *West Wind* is valid.

(2) The protest of state Y against the internment of the submarine, the *Porpoise*, is not valid.

(3) The protest of state X against the action of state D in interning the prize crew on the *East Wind* and allowing repairs and release of the vessel is not valid.

(*b*) (1) The protest of state Y against the furnishing of fuel and provisions within a period of three months in state E to the*Athens* is valid.

(2) The protest of state X against the toleration by state E of such use of radio by the commanding officer of the *King* is valid.

(3) The protest of state X against the toleration by state E of such use of the radio by the commanding officer of the *Prince* is valid.

The protest against the use of the submarine cable is not valid, though censorship may be requested.

NOTES

Proclamations of neutrality, 1914–1918.—During the World War, 1914–1918, the nature of the proclamations of neutrality varied greatly. Some were brief and gen-

eral in their terms; others were of great length and detailed in their specifications, and sometimes explanatory notes followed these specifications. Special proclamations were issued from time to time as new conditions seemed to demand.

The declaration issued by Spain, August 7, 1914, was brief, announcing the fact that certain states were at war and prescribing for "Spanish subjects the strictest neutrality in conformity with the laws in force and the principles of public international law," and putting into operation certain parts of the Spanish penal code. Other decrees later made operative certain Hague conventions, etc.

The Netherlands declaration of neutrality of August 5, 1914, contained 18 articles. The eighteenth article called attention to the articles of codes and to legislation. The Netherlands, being surrounded by belligerents, necessarily found the problem of maintenance of neutrality difficult, and explicit provisions were essential.

Even on the coasts of the Americas the problems of maintaining neutral rights became so acute that suggestions were made that there be concerted action by the neutral American states. (Memorandum, Peruvian Minister for Foreign Affairs, November, 1914; 1914 For. Rel. Sup. p. 442.) It was suggested that a congress of neutrals be summoned.

Netherlands declaration, 1914.—The Netherlands declaration of neutrality of August 5, 1914, is owing to the geographical situation, naturally strict and definite. The right of the Netherlands to enforce regulations so strict in nature was questioned by belligerents, but the Netherlands Government remained firm. The declaration provided:

ARTICLE 1. Within the limits of the territory of the State, including the territory of the Kingdom in Europe and the colonies and possessions in other parts of the world, no hostilities of any kind are permitted, neither may this territory serve as a base for hostile operations.

ART. 2. Neither the occupation of any part of the territory of the state by a belligerent nor the passage across this territory by land is permitted to the troops or convoys of munitions belonging to the belligerents, nor is the passage across the territory situated within the territorial waters of the Netherlands by the warships or ships assimilated thereto of the belligerents permitted.

ART. 3. Troops or soldiers belonging to the belligerents or destined for them arriving in the territory of the state by land will be immediately disarmed and interned until the termination of the war.

Warships or ships assimilated thereto belonging to a belligerent who contravenes the provisions of articles 2, 4, or 7 will not be permitted to leave the said territory until the end of the war.

ART. 4. No warships or ships assimilated thereto belonging to any of the belligerents shall have access to the said territory.

ART. 5. The provisions of article 4 do not apply to—

1. Warships or ships assimilated thereto which are forced to enter the ports or roadsteads of the state on account of damages or the state of the sea. Such ships may leave the said ports or roadsteads as soon as the circumstances which have driven them to take shelter there shall have ceased to exist.

2. Warships or ships assimilated thereto belonging to a belligerent which anchor in a port or roadstead in the colonies or oversea possessions exclusively with the object of completing their provision of foodstuffs or fuel. These ships must leave as soon as the circumstances which have forced them to anchor shall have ceased to exist, subject to the condition that their stay in the roadstead or port shall not exceed 24 hours.

3. Warships or ships assimilated thereto belonging to a belligerent employed exclusively on a religious, scientific, or humanitarian mission. * * *

ART. 17. The state territory comprises the coastal waters to a distance of 3 nautical miles, reckoning 60 to the degree of latitude, from low-water mark.

As regards inlets, this distance of 3 nautical miles is measured from a straight line drawn across the inlet at the point nearest the entrance where the mouth of the inlet is not wider than 10 nautical miles, reckoning 60 to the degree of latitude. (1916 N. W. C., Int. Law Topics, p. 61.)

(*a*) (*1*) *Transport of forces.*

Transit of reservists.—Neutral obligations in regard to the carriage of persons who might serve or probably would serve in the armed forces of a belligerent have long been matters of discussion. As early as August 8, 1914,

the French chargé d'affaires in a communication to the Secretary of State said:

I hear that the collector of customs at New York has sent to our consul general a communication according to which "all that could be utilized for the army, either men or supplies," will be considered as contraband.

If in accord with a decision of the Federal Government, that communication seems to me to call for the most express reservations:

1. The law of nations can not stand in the way of the citizens of a country at war discharging their most sacred duty. Besides, at the time of the Balkan wars, large numbers of reservists returned to their country by groups without any objection being raised. (1914, For. Rel., Sup., p. 557.)

The Secretary of State replied that there must be a mistake, as the Federal Government had made no such decision, and, further, it was said:

Replying, I beg to say that this situation must have resulted from mistake somewhere, or must have been the result of extra precautions at the beginning of European hostilities to prevent the outfitting of ships for use in war or military expeditions or enterprises from the United States in violation of her neutrality. I hardly think that the collector of customs was acting under instructions, if he made such a declaration as that attributed to him. That declaration is not the decision of the Federal Government, which is neither interested nor inclined in having supplies considered contraband of war on the ground that they could be utilized for the army or military forces of the belligerents. On the contrary, it is and has been the hope of this department that the Governments unhappily at war in Europe will make liberal declarations respecting contraband, to the end that international commerce may suffer the least possible hardships during the existence of hostilities. This department has advised the trade in this country that cereals, and foodstuffs generally, will constitute contraband of war only when destined to the army or navy or some department of government of one of the belligerents. This Government will not, of course, seek to unnecessarily restrict the commerce of its citizens with those of the nations at war, or to extend contraband so as to include foodstuffs or supplies, merely on the ground that they are adaptable to the uses of war.

I hand you herewith instructions to the collectors of customs, issued by the Secretary of the Treasury on August 8 [10], 1914, and call your attention to their provisions, which, as you will ob-

serve, are not in accord with the communication which the consul general says he has received from the collector of customs at New York.

Replying to the other grounds of your exceptions, no resistance, within the knowledge of this department, has been offered to reservists in the army of any of the belligerents wishing to leave this country for military service in their native lands, whether such reservists leave singly or in numbers. It is believed that the only restriction upon the departure of citizens of any of the countries of war for service in the army is to be found in the neutrality laws of the United States, embodied in the proclamation of the President, prohibiting the "beginning or setting on foot or providing or preparing the means for any military expedition or enterprise to be carried on from the territory or jurisdiction of the United States against the territories or dominions of either of the said belligerents." What constitutes a military expedition or enterprise either begun or set on foot in this country has been the subject of some judicial determination by the courts of the United States; and, while it is not deemed necessary to point to these decisions at this time, it may be said generally that return from the United States to their native lands by citizens of foreign countries, though to enter military service there, whether their departure is singly or in numbers, is not illegal or in violation of the neutrality of the United States, unless accompanied by other circumstances evidencing the beginning or setting on foot, or providing or preparing the means for a military expedition or enterprise from the territory or jurisdiction of the United States against the territories or dominions of one of the belligerents. It is the purpose of this Government to observe complete neutrality in the war now being waged by European countries; but it is not deemed necessary to adopt means or to apply regulations which are not demanded by the neutrality laws of the United States or the rules of international law. (Ibid., p. 558.)

In subsequent correspondence questions were raised in regard to the carriage on neutral vessels either as crew or passengers of persons liable to military service in a belligerent country. The United States made it clear that the right to arrest such persons on the high seas unless they were already enrolled in the forces of a belligerent would not be admitted. The fitting out or setting on foot of a military expedition in the United States was prohibited.

The question as to whether reservists might be permitted to pass through the United States was raised early in the World War. In a telegram of the Secretary of State to the consul general at Vancouver, August 13, 1914, it was explained that—

> Neither the neutrality laws of the United States nor proclamation of the President prohibit passage through the United States of reservists who are returning to their respective countries for the purpose of military service, when the circumstances of their transit do not amount to the beginning or setting on foot or providing or preparing the means for any military expedition or enterprise to be carried on from the territory or jurisdiction of the United States. If such reservists are organized and armed and so manifest the existence of a military expedition or enterprise, they are not entitled to transit through the United States. (1914 For. Rel. U. S. Sup., p. 564.)

Information to similar intent was given to the diplomatic representatives of the belligerent powers and later it was also stated that the governments availing themselves of this permission should preserve the United States against such reservists or others becoming a public charge.

Innocent passage.—Of innocent passage in general the report of the Research in International Law, Harvard Law School, proposed the following:

ARTICLE 14

> A state must permit innocent passage through its marginal seas by the vessels of other states, but it may prescribe reasonable regulations for such passage.

In supporting this article the report said:

> Notwithstanding the fact that the sovereignty of a state extends over its marginal sea, the state may not prevent the innocent passage of vessels of other states through such waters, free of all tolls, light dues, or other exactions. This recognition of the right of innocent passage is the result of an attempt to reconcile the existence of sovereignty over marginal seas with the freedom of navigation on the high seas. In inland waters the right of innocent passage is not recognized.
>
> It seems necessary to include in the convention a definition of "innocent passage." It should, perhaps, be observed that inno-

cent passage is not necessarily restricted to voyages between destinations outside the littoral state, although the vessel of another state is not in innocent passage when she is approaching the port of a state through its marginal seas or when she is entering or leaving a port of that state. For example, a British vessel leaving New York for Galveston may be in innocent passage when traversing the marginal sea off the Florida coast, but would not be in innocent passage when traversing the marginal sea upon leaving New York and approaching Galveston.

The word "vessels" in article 14 is limited by the definition in article 22, thus confining innocent passage to vessels which are privately owned and privately operated and to vessels the legal status of which is assimilated to that of such vessels. This excludes vessels of war from exercising the right of innocent passage. The sovereignty of the littoral state is restricted by the right of innocent passage because of a recognition of the freedom of the seas for the commerce of all states. There is, therefore, no reason for freedom of innocent passage of vessels of war. Furthermore, the passage of vessels of war near the shores of foreign states and the presence without prior notice of vessels of war in marginal seas might give rise to misunderstanding even when they are in transit. Such considerations seem to be the basis for the common practice of states in requesting permission for the entrance of their vessels of war into the ports of other states. A state may permit the passage of the war vessels of other states through its marginal sea, but the text relieves it from any obligatiion to do so. It might properly be assumed that a state does permit such passage when no action has been taken by that state regulating it. Even for vessels entitled to exercise the right of innocent passage it is obviously necessary that each state should be permitted to make reasonable regulations governing that passage, subject only to the restriction that these regulations be uniform for all states. Such regulations may, of course, distinguish between different kinds of vessels. For example, a littoral state might require all submarine vessels of other states to navigate upon the surface in order that shipping in the marginal sea may not be subjected to unknown risks. (23 A. J. I. L. Spec. Sup., [April, 1929], p. 295.)

SOLUTION

(*a*) (1) The protest of state X against the action of state D both as regards the removal of the soldiers and the internment of the *West Wind* is valid.

(*a*) (2) *Entrance of vessels.*

Public-owned merchant vessel.—The status of public-owned vessels engaged in trade or merchant service has been differently regarded in courts of different states and sometimes in the different courts of the same state. A claim was made against the steamship *Pesaro* in 1926 for failure to deliver certain cargo accepted for transportation from Italy to New York. There was no denial that the ship was operated as a merchant vessel for the carriage of merchandise.

The *Pesaro* was libeled for failure to deliver this cargo and the district court dismissed the libel and the case was appealed to the Supreme Court of the United States.

The Italian ambassador to the United States appeared and on behalf of the Italian Government specially set forth that the vessel at the time of her arrest was owned and possessed by that Government, was operated by it in its service and interest; and therefore was immune from process of the courts of the United States. At the hearing it was stipulated that the vessel when arrested was owned, possessed, and controlled by the Italian Government, was not connected with its naval or military forces, was employed in the carriage of merchandise for hire between Italian ports and ports in other countries, including the port of New York, and was so employed in the service and interest of the whole Italian nation as distinguished from any individual member thereof, private or official, and that the Italian Government never had consented that the vessel be seized or proceeded against by judicial process. On the facts so appearing the court sustained the plea of immunity and on that ground entered a decree dismissing the libel for want of jurisdiction. (Berizzi Brothers Co. *v.* S. S. Pesaro, 271 U. S. [1926] 562.)

It is realized that the practice of operating publicly owned vessels in the merchant marine will give rise to new and delicate problems, and there may be disadvantages which may appear later to offset the advantages which have been expected. The government engaging in such undertakings at first appears to be in an advantageous position over private owners.

The recent extension of governmental functions particularly in relation to business have given rise to diffi-

culties and have made early precedents which might be technically applicable open to question from a practical or business point of view. Some of these questions arose in the case of the *Porto Alexandre* decided in the British court in 1920. The *Porto Alexandre* had run upon the mud in the River Mersey. When arrested for payment of salvage the Portuguese Republic put forward the claim that the *Porto Alexandre* was a public vessel and an appeal was granted from the decision of Mr. Justice Hill which set aside the writ in rem and all subsequent proceedings against the vessel. Lord Justice Scrutton said, supporting the earlier decision:

> I quite appreciate the difficulty and doubt which Hill, J., felt in this case, because no one can shut his eyes, now that the fashion of nationalization is in the air, to the fact that many states are trading or are about to trade with ships belonging to themselves; and if these national ships wander about without liabilities, many trading affairs will become difficult. But it seems to me the remedy is not in these courts. The *Parlement Belge* excludes remedies in these courts. But there are practical commercial remedies. If ships of the state find themselves left on the mud because no one will salve them when the state refuses any legal remedy for salvage, their owners will be apt to change their views. If the owners of cargoes on national ships find that the ship runs away and leaves them to bear all the expenses of salvage, as has been done in this case, there may be found a difficulty in getting cargoes for national ships. These are matters to be dealt with by negotiations between governments and not by governments exercising their power to interfere with the property of other states contrary to the principles of international courtesy which govern the relations between independent and sovereign states. While appreciating the difficulties which Hill, J., has felt, I think it is clear that we must in this court stand by the decision already given, and the appeal must be dismissed. (N. W. C., Int. Law Decisions, 1923, p. 59.)

Public vessels and commerce.—In the case of Berizzi Bros. Co. *v.* the Pesaro, already referred to, admitting that the precise question presented had never been before the court, the Supreme Court of the United States relied largely upon the opinion of Chief Justice Marshall in the case of the schooner Exchange *v.* McFaddon (7 Cranch

[1812], p. 116). The *Exchange* was an armed vessel under the French flag to which McFaddon and another claimed ownership.

Chief Justice Marshall said "this case involves the very delicate and important inquiry whether an American citizen can assert in an American court a title to an armed national vessel found within the waters of the United States."

In the case of the *Pesaro* it was stated that "the single question presented for decision by us is whether a ship owned and possessed by a foreign government, and operated by it in the carriage of merchandise for hire, is immune from arrest under process based on a libel in rem by a private suitor in a Federal district court exercising admiralty jurisdiction. (271 U. S. [1926] 562.)

In the case of the *Pesaro* it was said:

> It will be perceived that the opinion, although dealing comprehensively with the general subject, contains no reference to merchant ships owned and operated by a government. But the omission is not of special significance, for in 1812, when the decision was given, merchant ships were operated only by private owners, and there was little thought of governments engaging in such operations. That came much later.
>
> The decision in the *Exchange* therefore can not be taken as excluding merchant ships held and used by a government from the principles there announced. On the contrary, if such ships come within those principles, they must be held to have the same immunity as war ships, in the absence of a treaty or statute of the United States evincing a different purpose. No such treaty or statute has been brought to our attention.
>
> We think the principles are applicable alike to all ships held and used by a government for a public purpose, and that when, for the purpose of advancing the trade of its people or providing revenue for its treasury, a government acquires, mans, and operates ships in the carrying trade, they are public ships in the same sense that warships are. We know of no international usage which regards the maintenance and advancement of the economic welfare of a people in time of peace as any less a public purpose than the maintenance and training of a naval force.
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> The subsequent course of decision in other courts gives strong support to our conclusion. (Ibid.)

There were cited the cases of Briggs *v.* Light Boats (11 Allen, Mass. 157), vessels used as floating lights to aid navigation, the *Parlement Belge* (L. R. 5, P. D. 197), a vessel owned by Belgium and used for transporting mail, passengers, and freight for hire, and other cases.

The lower court, by Judge Mack, had decided that the principle of immunity did not extend to vessels employed as merchant vessels. (277 Fed. Rep. 473.)

The "Lake Monroe."—The *Lake Monroe* was a Government-owned vessel chartered to a shipping company and was carrying freight when it collided with an American fishing schooner. Whether the *Lake Monroe* should be exempt from arrest was among the questions raised before the court. In the act of September 7, 1916, it had been provided, section 9—

> Such vessels while employed solely as merchant vessels shall be subject to all laws, regulations, and liabilities governing merchant vessels, whether the United States be interested therein as owner, in whole or in part, or hold any mortgage, lien, or other interest therein. (39 U. S. Stat., Pt. 1., pp. 728, 730.)

In regard to this it was the opinion of the Supreme Court that—

> The language of section 9, "such vessels while employed solely as merchant vessels," must be read in connection with the phrase "whether the United States be interested therein as owner, in whole or in part, or hold any mortgage, lien, or other interest therein." Her service at the time was purely commercial, and she was subject by the terms of the act to the ordinary liability of a merchant vessel, notwithstanding the indirect interest of the Government in the outcome of her voyage.
>
> We deem it clear, also, that among the liabilities designated by the section is the liability of a merchant vessel to be subjected to judicial process in admiralty for the consequences of a collision. (The *Lake Monroe*, 250 U. S. [1919], 246.)

The "Comte de Smet de Naeyer."—The full-rigged ship *Comte de Smet de Naeyer* was owned by a Belgian company and was used as a school ship. When captured by German forces and brought before the prize court at Hamburg the court decided in favor of the owners for

the release of the ship partly on the ground that its mission was scientific. The German Government appealed. The higher court said:

> As has been explained in detail in the decision of the competent court of October 6, 1916, in the matter of the *Primavera*, the prize regulations in agreement with the London declaration are to be understood to mean by the expression "Merchant ships" any ocean-going ship that is not the property of the State. If this results distinctly from article 2 of the prize court regulations according to which only neutral public ships are excepted from the exercise of the prize law, it is also explicitly stated in the London conference that the expression "navire de commerce" includes all ships that are not public ships, and, accordingly, in article 6 of the prize regulations, it was regarded as necessary by way of exception to exempt certain ships from seizure that are not built to enter ocean service for gain, and, therefore, would not be regarded as merchant ships in the narrower sense. (1922 N. W. C. Int. Law Documents, p. 151.)

The decision of the lower court was set aside and the ship condemned.

Decisions as to vessels.—A review of recent cases upon the status of merchant vessels belonging to or controlled by states shows a wide variety of opinion which is admittedly very unsatisfactory. Manifestly a merchant vessel owned by a state might be at a marked advantage over a privately owned merchant vessel if it possessed the immunities to which a vessel of war is entitled. Foreign port authorities would be embarrassed in differentiating in the treatment of publicly owned and privately owned merchant vessels.

There may be further difficulties arising in consequence of the nature and probable disposition of cargo. If both ship and cargo are devoted solely to public service, as in furnishing supplies to lighthouses, the immunity may be of a different degree from that of a ship and cargo engaged in a purely commercial venture.

League of Nations committee, 1926.—The Committee of Experts for the Progressive Codification of International Law in 1926 appointed a subcommittee "to inquire into

the legal status of Government ships employed in commerce with a view to the solution by way of conventions of the problems raised thereby." (20 A. J. I. L., Spec. Sup., p. 260.) The subcommittee reported that regulations by international agreement were "desirable and realizable." The subject had been before the unofficial international maritime committee for several years and a draft convention was signed by several states April 10, 1926, but this is subject to ratification. In the discussions before the international maritime committee it was evident that the determination of the status of vessels publicly owned or publicly controlled in whole or in part was not merely of importance in time of war but also in time of peace. It was admitted as a matter of course that a state could determine the status of vessels which itself owned or controlled while such vessels were within its own jurisdiction, but the application of the same regulations to vessels publicly owned or controlled flying a foreign flag and entering its jurisdiction was doubted and the opinions were not uniform.

In early opinion the status of publicly owned or controlled merchant vessels with little difference of view was assimilated to that of public vessels employed in state service. Gradually this easy solution of the problem was questioned in diplomatic correspondence and in courts. The courts sometimes admitted that while following precedents in reaching a decision that there was ground in new conditions for modifying the immunities if publicly owned vessels were to be used as merchant vessels. As the question has received further consideration, the need of new rules has become more evident.

The subcommittee, consisting of Mr. de Magalhaes and Mr. Brierly, appointed by the League of Nations committee of experts, gave the opinion that "the legal status of Government vessels employed in commercial work is a problem which it is most desirable, and quite possible, to solve by international agreement." The subcommittee

would extend such agreements to the cargoes and passengers on these vessels.

The International Maritime Committee at Gothenburg in 1923 adopted the following resolution on the "immunity of state-owned ships":

ARTICLE 1. Vessels owned or operated by states, cargoes owned or operated by states, cargoes owned by them, and cargo and passengers carried on such vessels and the states owning or operating such vessels shall be subjected, in respect of claims relating to the operation of such vessels or to such cargoes, to the rules of liability and to the same obligations as those applicable to private vessels, persons or cargoes.

ART. 2. Except in the case of the ships and cargoes mentioned in paragraph 3, such rules and liabilities shall be enforceable by the tribunals having jurisdiction over, and by the procedure applicable to, a privately owned vessel or cargo or the owner thereof.

ART. 3. In the case of (*a*) ships of war and other vessels owned or operated by the state and employed only in governmental noncommercial work; (*b*) state-owned cargo carried only for purpose of governmental noncommercial work on vessels owned or operated by the state, such liabilities shall be enforceable only by action before the competent tribunals of the state owning or operating the vessel in respect of which the claim arises.

ART. 4. The provisions of this convention will be applied in every contracting state in all cases where the claimant is a citizen of one of the contracting states, provided always that nothing in this convention shall prevent any of the contracting states from settling by its own laws the rights allowed to its own citizens before its own courts. (20 A. J. I. L. [1926] Spec. Sup., p. 276.)

The subcommittee proposed certain changes in this resolution:

(*a*) In article 1 suppress the words "in respect of claims relating to the operation of such vessels or to such cargoes" and insert them in article 2 after the words "such rules and liabilities."

(*b*) In article 3, paragraph (*a*), substitute the word "public" for the word "governmental," and in paragraph (*b*) of the same article for the word "governmental" read "public."

(*c*) Article 4 should be drafted as follows:

"The provisions of the conventions of 1910 and 1922 are amended in so far as they except all state ships."

Article 4 of the draft becomes article 3.

(*d*) Add a new article, numbered 6, to read as follows:

"In time of war, ships belonging to a belligerent state or managed by it, and cargoes belonging to such a state or borne on such ships, shall not be liable to attachment, seizure, or detention by a foreign court of justice.

"Actions against such ships or cargoes may, during the war, be brought before the competent court of the state owning or managing such ships or cargoes."

(*e*) Add further new article numbered 7, to read as follows:

"The high contracting parties undertake that, should different interpretations of the provisions of this convention be adopted in various countries, they will request the Council of the League of Nations to obtain the opinion of the Permanent Court of International Justice at The Hague upon the said divergences of interpretation." (Ibid., p. 277.)

Treatment of vessels.—In the United States the words "vessel of the United States" are used to mean any vessel publicly or privately owned under the flag of the United States.

By the suits in admiralty, act of 1920 (41 U. S. Stat., p. 525), publicly owned vessels are not subject to seizure or arrest by judicial process though, if engaged as a merchant vessel, a libel in personam may be brought within the United States. If a suit is brought in a foreign state against a merchant vessel owned by the United States the consul in the district may claim that the vessel is immune from arrest and may execute an agreement, give bond or otherwise arrange for the release of the vessel pledging the United States to satisfy judgment.

The convention and statute on the international régime of maritime ports, which came into force July 20, 1926, provides in article 13 that "This statute applies to all vessels, whether publicly or privately owned or controlled." It does not apply, however, to vessels exercising public authority as "warships or vessels performing police or administrative functions."

Entrance of submarines.—The use of submarines while foreseen did not become a problem of serious importance

till the World War. During the World War the allied powers were particularly desirous of limiting the activities of submarines within the narrowest possible range. The Governments of Italy, August 21, 1916; France, August 21; Great Britain, August 22; Russia, August 26; Japan, August 28; Portugal, August 30, transmitted an identic memorandum to neutral powers as follows:

In the presence of the development of submarine navigation, under existing circumstances and by reason of what may unfortunately be expected from enemy submarines, the allied Governments deem it necessary, in order to protect their belligerent rights and the freedom of commercial navigation, as well as to remove chances of conflict, to exhort the neutral Governments, if they have not already done so, to take efficacious measures tending to prevent belligerent submarines, regardless of their use, to avail themselves of neutral waters, roadsteads, and harbors.

In the case of submarines the application of the principles of international law offers features that are as peculiar as they are novel, by reason, on the one hand, of the facility possessed by such craft to navigate and sojourn in the seas while submerged and thus escape any supervision or surveillance, and, on the other hand, of the impossibility to identify them and determine their national character, whether neutral or belligerent, combatant or innocent, and to put out of consideration the power to do injury that is inherent in their very nature.

It may be said, lastly, that any submarine war vessel far away from its base, having at its disposal a place where it can rest and replenish its supplies, is afforded, by mere rest obtained, so many additional facilities that the advantages it derives therefrom turn that place into a veritable basis of naval operations.

In view of the present condition of things the allied Governments hold that—

Submarine vessels must be excluded from the benefit of the rules heretofore accepted in international law regarding the admission and sojourn of war and merchant vessels in the neutral waters, roadsteads, and harbors; any submarine of the belligerents that once enters a neutral harbor must be held there.

The allied Governments take this opportunity to warn the neutral powers of the great danger to neutral submarines attending the navigation of waters visited by the submarines of belligerents. (10 A. J. I. L. Spec. Sup. 1916, p. 342.)

The United States in a memorandum after giving a résumé of its understanding of that of the allies said;

In reply the Government of the United States must express its surprise that there appears to be an endeavor of the allied powers to determine the rule of action governing what they regard as a "novel situation" in respect to the use of submarines in time of war and to enforce acceptance of that rule, at least in part, by warning neutral powers of the great danger to their submarines in waters that may be visited by belligerent submarines. In the opinion of the Government of the United States the allied powers have not set forth any circumstances, nor is the Government of the United States at present aware of any circumstances, concerning the use of war or merchant submarines which would render the existing rules of international law inapplicable to them. In view of this fact and of the notice and warning of the allied powers announced in their memoranda under acknowledgment it is incumbent upon the Government of the United States to notify the Governments of France, Great Britain, Russia, and Japan that, so far as the treatment of either war or merchant submarines in American waters is concerned, the Government of the United States reserves its liberty of action in all respects and will treat such vessels as, in its opinion, becomes the action of a power which may be said to have taken the first steps toward establishing the principles of neutrality and which for over a century has maintained those principles in the tradit onal spirit and with the high sense of impartiality in which they were conceived.

In order, however, that there should be no misunderstanding as to the attitude of the United States, the Government of the United States announces to the allied powers that it holds it to be the duty of belligerent powers to distinguish between submarines of neutral and belligerent nationality, and that responsibility for any conflict that may arise between belligerent warships and neutral submarines on account of the neglect of a belligerent to so distinguish between these classes of submarines must rest entirely upon the negligent powers. (Ibid., p. 343.)

SOLUTION

(*a*) (2) The protest of state Y against the internment of the submarine, the *Porpoise*, is not valid.

(*a*) (3) *Entrance of prize.*

The German "UC 8," 1915.—On November 5, 1915, the *UC 8*, a German submarine, showed signals of distress off the Dutch coast near Terschelling. A Dutch vessel

went to its assistance and the submarine was escorted to Terschelling. Two days later the submarine was notified that it would be interned as it had entered Dutch waters contrary to the declaration of neutrality and the submarine was interned at Alkmaar.

On November 11, 1915, the German minister at The Hague protested against the internment maintaining that the submarine had entered Dutch waters because of a defective electric compass, that the action of the Netherland Government was not in accord with conventional and international law, that such restrictions as were contained in the Netherlands declaration of neutrality could not be established by unilateral declaration, and that the measures of restraint were excessive.

The Netherland Government in a reply of November 22, 1915, said:

L'internement du *C 8* est basé sur les prescriptions des articles 4, 17 et 3, 2e al. de la déclaration de neutralité néerlandaise, qui fut communiquée au Gouvernement Impérial par l'intermédiaire de la Légation des Pays-Bas à Berlin. L'article 4 statue que la présence d'aucun navire de guerre belligérant ne sera permise dans la juridiction des Pays-Bas; l'article 17 porte que cette juridiction comprend la mer territoriale qui est d'une largeur de trois milles marins; l'article 3, al. 2, prescrit l'internement du navire de guerre belligérant qui serait entré dans ladite juridiction au mépris de l'art. 4. L'article 2 cité dans l'office de Votre Excellence ne déroge pas à l'interdiction de l'art. 4, il en forme au contraire une amplification en ce qu'il exclut expressément le passage par les eaux intérieures.

L'interdiction contenue dans l'article 4 n'est d'aucune façon contraire au Droit des Gens. L'article 10 de la XIIIe Convention de la Haye statue que la neutralité d'un état n'est pas compromise par le simple passage de navires de guerre belligérants dans ses eaux territoriales. Lors de l'élaboration de cet article il fut constaté que la question de savoir si un état neutre a le droit d'interdire ce passage était laissée sous l'empire du Droit des Gens général. Ce droit autorise un état neutre à prendre dans ses eaux territoriales les mesures nécessaires pour la sauvegarde de ses droits souverains. Aucun précepte ne défend à un état d'interdire à cet effet aux navires de guerre belligérants de se rendre dans ces eaux. Le droit d'un état neutre d'en interdire le pas-

sage à ces navires est reconnu par différents auteurs contemporains du Droit des Gens, entre autres tout dernièrement par le Docteur Hans Wehberg dans son ouvrage intitulé, "Das See-Kriegsrecht," où il est dit: "Den Neutralen muss vielmehr das Recht den Kriegsschiffen die Durchfahrt durch die Kuestengewaesser zu verbieten in vollem Umfange zugesprochen werden." * * *

L'article 5 de la Déclaration de neutralité énonce les cas où nonobstant la régle de l'article 4 la présence d'un navire de guerre d'un belligérant dans la juridiction des Pays-Bas est permise. Aucun de ces cas ne se présentait pour le *C 8*, notamment le navire n'avait subi aucune avarie qui nécessitait son entrée dans les eaux territoriales néerlandaises.

Un défaut du compas électrique ne saurait justifier l'entrée du sous-marin dans les eaux territoriales néerlandaises, vu que le commandant, eu égard aux difficultés de navigation dans ces parages, aurait en tout cas dû prendre les précautions de rigueur pour éviter de pénétrer dans les dites eaux, c'est-à-dire en naviguant à la sonde. Cette précaution était d'autant plus nécessaire, que le commandant d'après sa propre déclaration, avait déjà pendant le voyage douté du fonctionnement correct du compas.

Une copie de la déclaration en langue néerlandaise signée par le commandant et portant en marge une addition en langue allemande, également signée par lui, est jointe à la présente.

De ce qui précède il résulte d'une part que la déclaration de neutralité néerlandaise imposait au Gouvernement de la Reine le devoir absolu de procéder à l'internement du sous-marin *C 8*, d'autre part que les règles qu'elle contient à ce sujet ne sont nullement contraires au Droit des Gens. (Ministre des Affaires Etrangères, Recueil de diverses communications, 1916, p. 151.)

This reply was not satisfactory to the German Government, as was stated in a note of November 25 setting forth the German position and requesting the immediate release of the submarine.

The Netherlands Government later, December 7, 1915, pointed out to Germany that—

Dans son exposé le Gouvernement Impérial passe sous silence quelques points de grande importance, savoir:

1. que le commandant du sous-marin s'était aperçu déjà en pleine mer que son compas électrique ne fonctionnait pas bien;

2. que néanmoins il n'avait pas pris la précaution de rigueur dans ces parages de naviguer à la sonde, ce qui l'aurait aidé à s'orienter et à rester en dehors des eaux territoriales, et,

3. qu'il n'était pas entré dans les eaux territoriales pour y réparer une avarie. (Ibid., p. 155.)

The Netherland Government also stated that it could not make distinctions between intentional and nonintentional entrance. The defect in an electric compass was not considered as an evidence of distress, but as an additional reason for exercising care in navigation in order that regulations of neutrality might not be violated.

Other submarines entering Dutch territorial waters were interned.

Radio upon vessels.—While prizes are generally admitted to neutral ports in case of distress, distress must manifestly be of a nature reasonably to imperil the vessel. Some neutral states do allow prizes to be sequestrated pending adjudication in a belligerent court, but in Situation III entrance to the territorial sea is forbidden to all belligerent vessels except strictly private merchant vessels upon the surface. The *East Wind* in charge of a prize crew would not be a strictly private merchant vessel nor would the fact that its radio was disabled constitute such a condition as would make the vessel so unseaworthy as to constitute distress, for vessels for many generations operated without radio. State X could not maintain that this was entrance in distress, and the authorities of D were acting within their rights in interning the prize crew and permitting repairs to the *East Wind.*

SOLUTION

(*a*) (3) The protest of state X against the action of state D in interning the prize crew on the *East Wind* and allowing repairs and release of the vessel is not valid.

(*b*) (*1*) *Supplying vessels of war at sea.*

Supplies to vessels of war.—During the World War, 1914–1918, the shipping of supplies from ports of the United States to vessels of war of the belligerents was often a subject of diplomatic correspondence.

As early as August 11, 1914, the matter of granting clearance from New York to the German steamship *Barbarossa* was raised. This vessel had taken on a large amount of fuel and was apparently planning to transfer a part of its cargo at sea. In the opinion of the Department of State these facts would not be sufficient for refusing clearance to the private merchant vessel.

In the case of the *Mazatlan* there was doubt as to the clearance from San Francisco. The Acting Secretary of State said on August 22, 1914, in a communication to the Secretary of Commerce:

SIR: I have the honor to acknowledge receipt of your letter of the 20th instant in which you inclose a telegram from the collector of customs at San Francisco regarding the clearance of the Mexican steamer *Mazatlan* flying the German flag and carrying a cargo of coal apparently destined to German cruisers in Pacific waters. I also acknowledge the receipt over the telephone of a further telegram from the collector stating that the acting German consul has offered to give a written guarantee that while this coal was an excess supply purchased for the *Leipzig*, the coal will be delivered in Guaymas, Mexico. The shipowner also volunteers to give bond guaranteeing the delivery of the coal at this Mexican port.

All the facts of this case before this department have been laid before the joint State and Navy neutrality board for its opinion. On the basis of that opinion the department recommends under the circumstances of this special case that the collector be instructed to give clearance to the *Mazatlan* with coal on board on condition that in addition to the written guarantee which the German consul offers to give as described in the telegram of the collector he give further written assurances (1) that the coal shipped by the *Mazatlan* will not be delivered to any German war vessel that has already received coal in the United States port since the outbreak of hostilities within three months after such receipt; and (2) that if the coal be delivered to any other German war vessel, the fact of such delivery will prevent the last-named war vessel from receiving coal in any United States port within a period of three months after said delivery.

Failing the receipt of these written assurances from the German consul it is recommended that clearance to the Steamship *Mazatlan* be denied unless the coal in question is first discharged. (1914, For. Rel. Sup; p. 617.)

Suspected cargoes.—These and other somewhat similar shipments were brought to the attention of the Department of State, and on September 19, 1914, a memorandum was transmitted to the representatives of the belligerent Governments setting forth the general rules which the Government would follow in dealing "with cases of merchant vessels suspected of carrying supplies to belligerent warships from American ports."

[*Memorandum of the Department of State with reference to merchant vessels suspected of carrying supplies to belligerent vessels, September 19, 1914*]

1. A base of operations for belligerent warships is presumed when fuel or other supplies are furnished at an American port to such warships more than once within three months since the war began, or during the period of the war, either directly or by means of naval tenders of the belligerent or by means of merchant vessels of belligerent or neutral nationality acting as tenders.

2. A common rumor or suspicion that a merchant vessel laden with fuel or other naval supplies intends to deliver its cargo to a belligerent warship on the high seas, when unsupported by direct or circumstantial evidence, imposes no duty on a neutral government to detain such ships even for the purpose of investigating the rumor or suspicion, unless it is known that the vessel has been previously engaged in furnishing supplies to a belligerent warship.

3. Circumstantial evidence, supporting a rumor or suspicion that a merchant vessel intends to furnish a belligerent warship with fuel or other supplies on the high seas, is sufficient to warrant detention of the vessel until its intention can be investigated in the following cases:

(*a*) When a belligerent warship is known to be off the port at which the merchant vessel is taking on cargo suited for naval supplies or when there is a strong presumption that the warship is off the port.

(*b*) When a merchant vessel is of the nationality of the belligerent whose warship is known to be off the coast.

(*c*) When a merchant vessel, which has, on a previous voyage between ports of the United States and ports of other neutral states, failed to have on board at the port of arrival a cargo consisting of naval supplies shipped at the port of departure, seeks to take on board a similar cargo.

(*d*) When coal or other supplies are purchased by an agent of a belligerent government and shipped on board a merchant vessel

which does not clear for a port of the belligerent but for a neighboring neutral port.

(*e*) When an agent of a belligerent is taken on board a merchant vessel having a cargo of fuel or other supplies and clearing for a neighboring neutral port.

4. The fact that a merchant vessel, which is laden with fuel or other naval supplies, seeks clearance under strong suspicion that it is the intention to furnish such fuel or supplies to a belligerent warship is not sufficient ground to warrant its detention, if the case is isolated and neither the vessel nor the warship for which the supplies are presumably intended has previously taken on board similar supplies since the war began or within three months during the period of the war.

5. The essential idea of neutral territory becoming the base for naval operations by a belligerent is repeated departure from such territory by a naval tender of the belligerent or by a merchant vessel in belligerent service which is laden with fuel or other naval supplies.

6. A merchant vessel, laden with naval supplies, clearing from a port of the United States for the port of another neutral nation, which arrives at its destination and there discharges its cargo, should not be detained if, on a second voyage, it takes on board another cargo of similar nature.

In such a case the port of the other neutral nation may be a base for the naval operations of a belligerent. If so, and even if the fact is notorious, this Government is under no obligation to prevent the shipment of naval supplies to that port. Commerce in munitions of war between neutral nations cannot as a rule be a basis for a claim of unneutral conduct, even though there is a strong presumption or actual knowledge that the neutral state, in whose port the supplies are discharged, is permitting its territory to be used as a base of supply for belligerent warships. The duty of preventing an unneutral act rests entirely upon the neutral state whose territory is being used as such a base.

In fact this principle goes further in that, if the supplies were shipped directly to an established naval base in the territory or under the control of a belligerent, this Government would not be obligated by its neutral duty to limit such shipments or detain or otherwise interfere with the merchant vessels engaged in that trade. A neutral can only be charged with unneutral conduct when the supplies, furnished to a belligerent warship, are furnished directly to it in a port of the neutral or through naval tenders or merchant vessels acting as tenders departing from such port.

7. The foregoing propositions do not apply to furnishing munitions of war included in absolute contraband, since in no event can a belligerent warship take on board such munitions in neutral waters, nor should it be permitted to do so indirectly by means of naval tenders or merchant vessels acting as such tenders. (Department of State, September 19, 1914.)

The "Locksun," 1914.—The German cruiser *Geier* entered the port of Honolulu for repairs in October, 1914. About the same time the steamer *Locksun* arrived. The Acting Secretary of State sent the following communication to the German ambassador on November 7, 1914, after the *Geier* had had a reasonable opportunity to make repairs:

My Dear Mr. Ambassador: Referring to my previous communication to you of October 30 regarding the internment of the German cruiser *Geier*, the department is now in possession of information that the German steamship *Locksun*, belonging to the Norddeutscher Lloyd Co., cleared August 16, 1914, from Manila with 3,215 tons of coal for Menado, in the Celebes; that she coaled the German warship *Geier* in the course of her voyage toward Honolulu, where she arrived soon after the *Geier;* that the *Locksun* received coal by transfer from another vessel somewhere between Manila and Honolulu; and that the captain stated that he had on board 245 or 250 tons of coal when he entered Honolulu, whereas investigation showed that he had on board approximately 1,600 tons.

From these facts the department is of the opinion that the operations of the *Locksun* constitute her a tender to the *Geier*, and that she may be reasonably so considered at the present time. This Government is therefore under the necessity of according the *Locksun* the same treatment as the *Geier*, and has taken steps to have the vessel interned at Honolulu if she does not leave immediately. (1914, For. Rel. U. S., Sup., p. 587.)

These vessels were interned November 12, 1914.

On November 11, 1914, the German ambassador had requested information as to under what rule the *Locksun* had been detained, saying:

The *Locksun* can not be considered as a man-of-war, not even as an auxiliary ship, but is a simple merchant ship. As to the alleged coaling of H. M. S. *Geier* from the *Locksun*, the neutrality regulations of the United States only provide that a vessel can

be prevented from taking coal to a warship for a period of three months after having left an American port. As the *Locksun* left the last American port (Manila) on August 16 she ought to be free on November 16. (1914, For. Rel. U. S., Sup., p. 588.)

To this the counselor for the Department of State replied on November 16, 1914:

My Dear Mr. Ambassador: In reply to your note of the 11th instant, inquiring on which rule or regulation the internment of the German ship *Locksun* is based, I would advise you that the *Locksun* has been interned on the principle that she has been acting as a tender to the German warship *Geier*, as the facts set forth in my note of the 7th instant substantiate. If, under the circumstances, the *Locksun* has been in fact a tender to the *Geier*, the question involved does not relate to the amount of coal which either the Locksun or the Geier has taken on within three months, but rather relates to the association and cooperation of the two vessels in belligerent operations. The *Locksun*, having been shown to have taken the part of a supply ship for the *Geier*, is, in the opinion of this Government, stamped with the belligerent character of that vessel, and has really become a part of her equipment. In this situation it is difficult to understand on what basis it would have been possible to distinguish between the two vessels, so as to intern the one and not the other. This Government, therefore, has taken what appears to it to be the only reasonable course, under the circumstances, and directed that both vessels be interned. (Ibid., p. 589.)

The "Berwind," 1914.—Neutral merchant vessels did apparently carry supplies to vessels of war. While there was not entire agreement on the facts, the case of the *Berwind* is illustrative. In a note from the British ambassador to the Secretary of State on November 20, 1914, the circumstances were stated to be as follows:

Sir: Under instructions from my Government, I have the honor to bring the following matter to your notice.

The American steamer *Berwind*, with a full cargo of coal on board and under charter to the Hamburg-American Line, cleared for Buenos Aires from New York on the 5th of August last.

It is now established beyond all possible doubt that the *Berwind* in fact never did proceed to Buenos Aires; that on September 18 last she arrived in ballast at Rio de Janeiro after having coaled the German warships *Cap Trafalgar* and *Dresden;* and

that she is now again in the port of New York, having arrived there from Rio de Janeiro on the 15th instant.

In the rules issued by your department on September 19 for the guidance of United States officers in dealing with merchant vessels suspected of carrying supplies to belligerent vessels, it is stated as follows:

"3. Circumstantial evidence, supporting a rumor or suspicion that a merchant vessel intends to furnish a belligerent warship with fuel or other supplies on the high seas, is sufficient to warrant detention of the vessel until its intention can be investigated in the following cases:

"(*c*) When a merchant vessel, which has on a previous voyage between ports of the United States and ports of other neutral states failed to have on board at the port of arrival a cargo consisting of naval supplies shipped at the port of departure, seeks to take on board a similar cargo."

Under instructions from Sir E. Grey I have the honor to request that in the event of the *Berwind* preparing to put to sea again with supplies or fuel on board, she may be detained in port in accordance with the rules quoted above. (1914 For. Rel., Sup., p. 633.)

This matter was by the Secretary of State brought to the attention of the Attorney General with a view to preventing "the *Berwind* or its owner from again using the ports of the United States as a point of departure of cargoes of coal or supplies for war vessels of the belligerents at sea in such manner as to constitute United States ports as bases of supplies for such armed vessels."

Supplies to vessels at sea.—Referring to Article 7 of Hague Convention No. XIII which states that—

> A neutral power is not bound to prevent the export or transit, for the use of either belligerent, of arms, munitions, or, in general, of anything which could be of use to an army or fleet. (1908, N. W. C. Int. Law Situations, pp. 188, 190),

and to the embodiment of the principle in American statements, the German Government indicated that the conduct of American port officials was more favorable to one belligerent than to the other. In a German memorandum of December 15, 1914, received by the Department of

State, it was said in referring to The Hague convention and the neutrality statement:

In spite thereof, various American port authorities have denied clearance from American ports to vessels of the merchant marine seeking to convey needed supplies or fuel to German warships either on the high seas or in other neutral ports.

According to the principles of international law above cited, a neutral state need not prevent furnishing supplies of this character; nor may it, after allowing the adversaries to be furnished with contraband, either detain or disable a merchant ship carrying such a cargo. Only if contraband trade should turn the ports into bases of German military operations, would the unilateral stoppage of the trade of those vessels become a duty. Such, perhaps, would become the case if German coal depots were established in the ports, or if the vessels called at a port in regular voyages on the way to German naval forces. But it stands to reason that an occasional sailing of one merchant vessel with coal or supplies for German warships does not turn a neutral port into a German base in violation of neutrality.

Our enemies draw from the United States contraband of war, especially arms, worth several billions of marks. This in itself they are authorized to do. But if the United States prevents our warships from occasionally drawing supplies from its ports, a great injustice grows out of the authorization, for it would amount to an unequal treatment of the belligerents and constitute a breach of the generally accepted rules of neutrality to Germany's detriment. (1914, For. Rel., Sup., p. 647.)

This communication received consideration, and on December 24, 1915, a reply was made in which attention was called to articles 18 to 20 of Hague Convention XIII.

ARTICLE 18

Belligerent warships may not make use of neutral ports, roadsteads, or territorial waters for replenishing or increasing their supplies of war material or their armament, or for completing their crews.

ARTICLE 19

Belligerent warships may only revictual in neutral ports or roadsteads to bring up their supplies to the peace standard.

Similarly these vessels may only ship sufficient fuel to enable them to reach the nearest port in their own country. They may, on the other hand, fill up their bunkers built to carry fuel, when in

neutral countries which have adopted this method of determining the amount of fuel to be supplied.

If, in accordance with the law of the neutral power, the ships are not supplied with coal within 24 hours of their arrival, the permissible duration of their stay is extended by 24 hours.

ARTICLE 20

Belligerent warships which have shipped fuel in a port belonging to a neutral power may not within the succeeding three months replenish their supply in a port of the same power. (1908 N. W. C., Int. Law Situations, p. 218.)

The reply stated:

Complaint, however, appears to be made by the Imperial German Government of the refusal of clearance by American authorities to merchant vessels intending to furnish fuel and supplies to German warships on the high seas or in neutral ports.

In reply I desire to call to your attention that the Government is not aware that any merchant vessel has been refused a clearance on these grounds during the present war, although certain temporary detentions have been found to be necessary for the purpose of investigating the bona fides of the alleged destinations of particular vessels and the intentions of their owners or masters. This has been done in an effort to carry out the principles of international law and the declarations of treaties with respect to coal supplies for belligerent warships and the use of neutral ports as bases of naval operations. Although as a rule there is on the part of the nationals of neutral countries entire freedom of trade in arms, ammunition, and other articles of contraband, nevertheless the Imperial German Government will recall that international law and the treaties declaratory of its principles make a clear distinction between ordinary commerce in contraband of war and the occasional furnishing of warships at sea or in neutral ports. In this relation I venture to advert to articles 18 to 20, inclusive, of Hague Convention XIII, 1907. From these articles it will be observed that a warship which has received fuel in a port belonging to a neutral power may not within the succeeding three months replenish her supply in a port of the same power. It is, I am sure, only necessary to call your attention to these articles to make it perfectly clear that if a number of merchant vessels may at short intervals leave neutral ports with cargoes of coal for transshipment to belligerent warships at sea, regardless of when the warships last received fuel in the ports of the same neutral power, the conventional prohibition would be nullified, and the three months' rule rendered useless. By such a practice a warship might remain on its station

engaged in belligerent operations without the inconvenience of repairing to port for fuel supplies. (1914, For. Rel., Sup., p. 648.)

German doctrine as to base.—The German Government in 1914 regarded the American practice as to clearance of vessels loaded with fuel and other supplies necessary for vessels of war as "untenable in international law." In a memorandum of December 15, 1914, it was said (see Ante, p. 133):

> According to the principles of international law above cited, a neutral state need not prevent furnishing supplies of this character; nor may it, after allowing the adversaries to be furnished with contraband, either detain or disable a merchant ship carrying such a cargo. Only if contraband trade should turn the ports into bases of German military operations, would the unilateral stoppage of the trade of those vessels become a duty. Such, perhaps, would become the case if German coal depots were established in the ports, or if the vessels called at a port in regular voyages on the way to German naval forces. But it stands to reason that an occasional sailing of one merchant vessel with coal or supplies for German warships does not turn a neutral port into a German base in violation of neutrality. (1914 For. Rel., Sup., p. 647.)

Replying to the German objections to American delay in granting clearance, the Secretary of State said on December 24, 1914:

> Furthermore, article 5 of the same convention (Hague XIII) forbids belligerents to use neutral ports and waters as a base of naval operations against their adversaries. As stated in the department's statement on "Merchant vessels suspected of carrying supplies to belligerent vessels," dated September 19 last (a copy of which is inclosed), the essential idea of neutral territory becoming the base for naval operations by a belligerent is, in the opinion of this Government, repeated departure from such territory of merchant vessels laden with fuel or other supplies for belligerent warships at sea. (Ibid., p. 648.)

Resolution of March 4, 1915, on bases.—In the early period of the World War the use of neutral waters and ports as bases from which to carry on hostile operations had been discussed. To meet the problems arising, the Congress of the United States acted as follows:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the passage of this resolution, and during the existence of a war to which the United States is not a party, and in order to prevent the neutrality of the United States from being violated by the use of its territory, its ports, or its territorial waters as the base of operations for the armed forces of a belligerent, contrary to the obligations imposed by the law of nations, the treaties to which the United States is a party, or contrary to the statutes of the United States, the President be, and he is hereby, authorized and empowered to direct the collectors of customs under the jurisdiction of the United States to withhold clearance from any vessel, American or foreign, which he has reasonable cause to believe to be about to carry fuel, arms, ammunition, men, or supplies to any warship, or tender, or supply ship of a belligerent nation, in violation of the obligations of the United States as a neutral nation.

In case any such vessel shall depart or attempt to depart from the jurisdiction of the United States without clearance for any of the purposes above set forth, the owner or master or person or persons having charge or command of such vessel shall severally be liable to a fine of not less than $2,000 nor more than $10,000, or to imprisonment not to exceed two years, or both, and, in addition, such vessel shall be forfeited to the United States.

That the President of the United States be, and he is hereby, authorized and empowered to employ such part of the land or naval forces of the United States as shall be necessary to carry out the purposes of this resolution.

That the provisions of this resolution shall be deemed to extend to all land and water, continental or insular, within the jurisdiction of the United States.

Approved, March 4, 1915. (38 U. S. Stat., Pt. I, p. 1226.)

The "Farn," 1915.—The question of the status of a vessel captured by a belligerent while it was lawfully flying the flag of its enemy has arisen in varying forms. When such a vessel enters a neutral port it is evident that the de facto authority in control must be recognized, otherwise the legality of the capture or other aspects of the captor's conduct would be brought into question. It has sometimes been maintained that prize decision is necessary before the neutral may lawfully recognize the captor's authority. Some of these questions were raised

in 1915 in regard to the *Farn* and the Secretary of State in a letter to the British Ambassador said:

WASHINGTON, *March 13, 1915.*

EXCELLENCY: I have the honor to acknowledge the receipt of your excellency's note of the 26th ultimo in relation to the steamship *Farn*, or *KD–3*, which has been interned in the port of San Juan, P. R., as a tender to a belligerent fleet. The department is advised that the *Farn* left Cardiff about September 5, 1914, for Montevideo, with a clause in her charter to deliver coal to warships if they so desired. Though, as you state, the vessel was not employed as a collier, or otherwise, in the Admiralty service, this fact would not in the opinion of the department affect her status at the time of internment if she indeed acted as a collier or auxiliary to a belligerent fleet. It is understood that the *Farn* was a British merchant vessel; that she had on board a cargo of Cardiff coal amounting to some 3,000 tons; that she was captured by the German cruiser *Karlsruhe* on October 5; that the cruiser placed a prize crew and officers on board; and that notwithstanding the known practice of the *Karlsruhe* to sink her enemy prizes, the vessel had been at sea continuously since the date of capture until she put into the port of San Juan on January 12 last, for provisions and water. The department believes that the only reasonable conclusion in the circumstances is that between October 5 and January 12 the *Farn* was used as a tender to German warships. It appears obvious that a belligerent may use a prize in its service and that the prize thereby becomes stamped with a character dependent upon the nature of the service. It is upon this view of the case that the United States Government concluded to treat the vessel as a tender, which character accords with her presumed service to the German fleet.

Your excellency states that it would be necessary before the vessel could be treated as a German fleet auxiliary that she should have been condemned by a competent prize court. With this conclusion the Government of the United States is under the necessity of disagreeing. In the opinion of this Government an enemy vessel which has been captured by a belligerent cruiser becomes, as between the two governments, the property of the captor without the intervention of a prize court. If no prize court is available, this Government does not understand that it is the duty of the captor to release his prize, or to refuse to impress her into its service. On the contrary, the captor would be remiss in his duty to his government and to the efficiency of its belligerent operations if he released an enemy vessel because he could not take her in for adjudication.

As to article 21 of The Hague Convention No. XIII of 1907, cited by your excellency as prescribing the treatment to be accorded to the *Farn*, it is only necessary to state that as it appears that His Majesty's Government has not ratified this convention, it should not be regarded as of binding effect between Great Britain and the United States.

In this relation I venture to call to your attention that the British consul at San Juan protested on January 12 against the clearance of the *Farn*, and that your excellency in your note of January 13 requested that she be detained in the interest of neutrality. It was not until January 17 that your excellency informed the department that His Majesty's Government presumed that the United States would act under article 21 of Hague Convention No. XIII of 1907 in regard to the release of the vessel. Sufficient time had thus elapsed to allow for communication with British warships and their appearance off the port of San Juan. The result of releasing a German prize loaded with coal at this juncture needs no comment.

In the circumstances the Government of the United States is under the necessity of adhering to its decision to intern until the end of the war the steamship *Farn* as a fleet auxiliary.

I have, etc.,

ROBERT LANSING
(*For the Secretary of State*).

(1915 For. Rel., Sup., p. 823.)

Supplies to vessels of war at sea.—From time to time during the World War vessels of war were off the coast of the United States and in need of fuel or other supplies. Questions arose as to whether it would be permissible for neutral or belligerent private vessels to transport such supplies to the vessels of war under the rule forbidding belligerents to use neutral ports and waters as a base of naval operations. The Acting Secretary of State, in a letter to the German ambassador, April 10, 1915, said:

The reasons for this rule are evident when its application is considered. In the first place, as only sufficient coal and supplies may be furnished a warship to enable it to reach its nearest home port, neutrals must, in order to determine the amount, be specifically advised of the size of the vessel, the number of the crew, the amount of fuel and supplies already on board, and the place

of transshipment. Without knowledge of these facts it would be impossible to limit the cargo of a vessel so that the warship could not take on board more coal or supplies than the rule of international law permits. In the second place, after the departure of a supply boat from the jurisdiction of the United States, this Government would have no control over the vessel to prevent delivery to a different warship from the one supposed to be entitled to replenishment, even though the supplies furnished far exceeded the amount permitted by international law. In the third place, as a belligerent warship may not, in any event, supply itself in the ports of a neutral power more than once in three months, a neutral government, before allowing coal and supplies to be taken to a belligerent warship from its ports, should be satisfied that none had been obtained by the same vessel within the preceding three months. This information can be had only from the warship itself, unless it has during the period entered a neutral port, or been in direct communication therewith. In any event, the amount of the stores to be supplied, and the time when they may properly be furnished are questions of fact, and not matters of presumption.

Furthermore, the allowance of coal and supplies by a neutral to a belligerent warship is based on the presumption that the latter intends to return to its home port. There can, however, be no such presumption in the present case. In fact, the presumption is that no German warship would attempt to return home when there is a virtual investment of German ports by hostile naval forces. On the contrary, it may be assumed with reasonable certainty that a German warship which remains on the high seas, proposes to take supplies in order to continue hostile operations against vessels of belligerent nationality and to intercept and search neutral vessels. If, therefore, such a warship is supplied with an amount of coal and supplies in excess of the amount permitted by law, the neutral territory from which such stores are derived would clearly constitute a depot for the projection of the naval operations of a belligerent in contravention of the rules of international law and article 5 of Hague Convention No. XIII of 1907. (1915 For. Rel., Sup., p. 862.)

SOLUTION

(*b*) (1) The protest of state Y against the furnishing of fuel and provisions within a period of three months in state E to the *Athens* is valid.

(*b*) (*2*) *Control of radio.*

Hague Convention V, 1907.—Hague Convention V, 1907, is concerned with the rights and duties of neutral States in case of war on land. The report of the second commission of the second Hague peace conference, the committee charged with the investigation of this subject in articles 3, 8, and 9 touches upon the use of wireless telegraph.

ARTICLE 3

Belligerents are likewise forbidden:

(*a*) To erect on the territory of a neutral state a wireless telegraphy station or any other apparatus for the purpose of communicating with the belligerent forces on land or sea;

(*b*) To use any installation of this kind established by them before the war on the territory of a neutral state, for purely military purposes, and which has not been opened for the service of public messages.

The provisions of this article follow directly from the principle affirmed in article 1. The inviolability of the territory of a neutral state is incompatible with the use of this territory by a belligerent in aid of any of the objects contemplated by article 3.

Here, likewise, there can be no conflict between the provisions of article 3 and those contained in article 8 below. The first of these articles contemplates the installation by belligerent parties of stations or apparatus on the territory of the neutral state or the use of stations or apparatus established by them in time of peace on this territory for purely military purposes without opening them to public service. Article 8, on the other hand, treats of public service utilities operated in a neutral country, either by the neutral state or by companies or individuals. (Reports of The Hague Peace Conferences, Carnegie Endowment, p. 539.)

ARTICLE 8

A neutral state is not called upon to forbid or restrict the use on behalf of the belligerents of telegraph or telephone cables or of wireless telegraphy apparatus belonging to it or to companies or private individuals.

Mention of this article has already been made in the commentary on article 3. We are here dealing with cables or apparatus belonging either to a neutral state or to a company or individuals, the operation of which, for the transmission of news, has the

character of a public service. There is no reason to compel the neutral state to restrict or prohibit the use by the belligerents of these means of communication. Were it otherwise, objections of a practical kind would be encountered, arising out of the considerable difficulties in exercising control, not to mention the confidential character of telegraphic correspondence and the rapidity necessary to this service.

Through His Excellency Lord Reay, the British delegation requested that it be specified that "the liberty of a neutral state to transmit messages by means of its telegraph lines on land, its submarine cables, or its wireless apparatus does not imply that it has any right to use them or permit their use in order to render manifest assistance to one of the belligerents."

The justice of the idea thus stated was so great as to receive the unanimous approval of the commission.

ARTICLE 9

Every measure of restriction or prohibition taken by the neutral state in regard to the matters referred to in articles 7 and 9 must be impartially applied by it to both belligerents.

A neutral state must see to the same obligation being observed by companies or private individuals owning telegraph or telephone cables or wireless telegraphy apparatus.

While declaring that a neutral state does not have to forbid or restrict either the commercial operations referred to in article 7, or the use of the cables or apparatus mentioned in article 8, the project does not, needless to say, detract from the right of the said neutral state to take, on its own account, such restrictive or prohibitive measures in these matters as it may deem necessary or useful. Its liberty in this respect remains entire, with but one condition, namely, that the measures so taken be applied impartially to the belligerents. (Ibid., p. 543.)

Control of radio, 1914.—As a result of diplomatic interchange of notes in regard to the use of radio, President Wilson by Executive Order No. 2042 of September 5, 1914, prohibited the stations within the jurisdiction of the United States "from transmitting or receiving for delivery messages of an unneutral nature and from in any way rendering to any one of the belligerents any unneutral service." Accordingly he authorized the taking over by the Government of "one or more of the high-powered radio stations within the jurisdiction of the

United States and capable of trans-Atlantic communication." The Secretary of the Navy was authorized to enforce this order. For this purpose detailed instructions were drawn up in late September limiting communication to shore stations in Europe and in the United Kingdom and to neutral messages which should be intelligible to the American officials. On November 7, 1914, the Navy Department proposed to substitute the following:

1. Radio messages containing information relating to the location or movements of armed forces of any belligerent nation, or relating to material or personnel of any belligerent nation, will be considered as unneutral in character and will not be handled by radio stations under the jurisdiction of the United States, except in the case of cipher messages to or from United States officials.

2. No cipher or code messages are permitted to be transmitted to radio ship stations of belligerent nations by any radio shore station situated in the United States or its possessions or in territory under the jurisdiction of the United States. Similar messages received by such radio stations from ships of belligerent nations will not be forwarded or delivered to addressee.

3. No communication of any character will be permitted between any shore radio station under the jurisdiction of the United States and warships of belligerent nations, except calls of distress, messages which relate to the weather, dangers of navigation or similar hydrographic messages relating to safety at sea.

4. No cipher or code radio message will be permitted to be sent from or received at any radio station in the United States via any foreign radio station of a belligerent nation, except from or at certain stations directly authorized by the Government to handle such messages. Press items in plain language relating to the war, with the authority cited in each item, will be permitted between such stations, provided no reference is made to movements or location of war or other vessels of belligerents.

5. No radiogram will be permitted to be transmitted from any shore radio station situated in the United States or under its jurisdiction to any ship of a belligerent nation or any shore radio station that in any manner indicates the position or probable movements of ships of any belligerent nation. Similar radiograms in the reverse direction will not be forwarded for delivery.

6. Code or cipher messages are permitted between shore-radio stations entirely under the jurisdiction of the United States and between United States shore stations and United States or neutral merchant vessels, provided they are not destined to a belligerent subject and contain no information of any unneutral character, such as the location or movements of ships of any belligerent nations. In such messages no code or cipher addresses will be allowed and all messages must be signed with the sender's name. Radio-operating companies handling such messages must assure the Government censor as to the neutral character of such messages. Such messages, both transmitted and received, must be submitted to the censor at such times as he may designate, which will be such that will not delay their transmission.

7. In general, censoring officials will assure themselves beyond doubt that no message of any unneutral character is allowed to be handled.

8. In order to insure that censors may, in all cases, be informed thoroughly and correctly as to the contents of radio messages coming under their censorship, they will demand, when necessary, that such messages be presented for their ruling in a language that is understandable to them.

9. At such radio stations where the censor is not actually present at the station when messages are received by the radio station for forwarding, either by radio or other means, messages may pass, provided they are unmistakably of a neutral character, without being first referred to the censor, but the operating company will be held responsible for the compliance by their operators with these instructions. (1914, For. Rel., Sup., p. 680.)

To these regulations the State Department had no objection.

The United States advised Liberia to take action in accord with the American Executive order and thus maintain neutrality.

Sir Edward Grey later communicated in a note the opinion of the British Government.

I have had the honor of receiving your note of the 14th instant, submitting for the consideration of His Majesty's Government alternative proposals as to the transmission of telegraphic correspondence subject to censorship between the various belligerent governments and their respective embassies in the United States.

I shall be glad if your excellency will inform your Government that of the two alternatives proposed, His Majesty's Government would prefer the adoption of the first, namely, that the

wireless stations of Sayville and Tuckerton should be made available for the transmission of the telegraphic correspondence between the belligerent governments and their embassies subject to strict censorship by the United States authorities.

His Majesty's Government does not regard it as practicable for German and Austro-Hungarian Government messages to be allowed to pass over British and French cables.

His Majesty's Government trusts the United States Government will agree with them that it is an essential part of the duties of the censor to paraphrase all messages of belligerent governments and their embassies in order to prevent, if possible, any hidden meaning being conveyed; this process, besides being followed in the case of messages sent in plain language, should also be applied to the text of all messages intended for translation into code or cipher before being dispatched. His Majesty's Government would also urge that the working of all wireless stations should be taken out of the hands of nationals of belligerent nations.

It is presumed that the adoption of the first alternative submitted by the United States Government would not entail the prohibition of the use of cable communication in preference to wireless for the telegraphic correspondence between Department of State and His Majesty's Embassy. Such correspondence would, of course, be subject to censorship to the same extent and as the correspondence of belligerent governments conducted through wireless stations. (Ibid., 677.)

Attitude of United States on radio.—The radio stations at Sayville, Long Island, and at Tuckerton, N. J., were in the early days of the World War able to communicate with Berlin and with German vessels of war at sea. Such use was protested by the British and on August 5, 1914, the following Executive order was issued:

Whereas proclamations having been issued by me declaring the neutrality of the United States of America in the wars now existing between various European nations; and

Whereas it is desirable to take precautions to insure the enforcement of said proclamations in so far as the use of radio communication is concerned;

It is now ordered, by virtue of authority vested in me to establish regulations on the subject, that all radio stations within the jurisdiction of the United States of America are hereby prohibited from transmitting, or receiving for delivery, messages of an unneutral nature, and from in any way rendering to any

one of the belligerents any unneutral service during the continuance of hostilities.

The enforcement of this order is hereby delegated to the Secretary of the Navy who is authorized and directed to take such action in the premises as to him may appear necessary.

This order to take effect from and after this date.

WOODROW WILSON.

THE WHITE HOUSE,
August 5, 1914.

The Secretary of the Navy in a circular telegram of August 8, 1914, instructed naval officers in regard to carrying out the Executive order.

No cipher or code messages permitted to be handled with radio ship or shore stations of belligerent nations by any government or commercial radio station under jurisdiction of United States nor permitted to be sent from any radio station in United States via foreign radio stations if destined to belligerent. Radio messages containing information relative to operations, material, or personnel of armed forces of any belligerent nation will be considered unneutral in character and will not be handled except in case of cipher messages to or from United States officials. In general censoring, official will assure himself beyond doubt that no message of unneutral character is handled. Censors will demand, if necessary, that messages be presented for their ruling in a language that is understandable to them. In case of doubt as to character of message it should be stopped and contents with full explanation of details forwarded to department (operations) by land line for instructions as to proper procedure.

DANIELS.

(Ibid. 675.)

As the submarine cables were in control of the enemies of Germany, the Secretary of State tried to devise a plan which should put communications of both belligerents on same footing and suggested to the belligerents the following alternatives:

(1) All the belligerents may send and receive wireless messages in code and cipher via Sayville and Tuckerton. The American censors at those stations receive the codes and ciphers used, in order to be able to see that the neutrality of the United States is not violated. Ciphers and codes to remain known only to the censors and the United States Government, also the contents of the messages sent; or

(2) Germany may use the English or French cables. The telegrams of all the belligerents submitted to censure as stated above. (Ibid., p. 670.)

The French and British communications to the Secretary of State on this suggestion follow:

FRENCH EMBASSY,
Manchester, Mass., August 12, 1914.
(Received 5.30 p. m.)

I am informed that the Federal Government is contemplating steps to suppress the supposed differential treatment now accorded by the United States Government to wireless communications and cable messages. If my information be correct, I beg your excellency to consider the radically different nature of these two sorts of communication. What my Government objected to from the start was the direct communication with the German men-of-war by which they would have been warned of the movements of the French merchantmen and men-of-war and which constituted a violation of neutrality. It is only because of the impossibility to ascertain whether messages addressed to Germany would not reach German men-of-war that my Government protested against the indiscriminate use of the Tuckerton and Sayville wireless stations. All belligerents are in that respect on an equal footing and this embassy is unable to let French men-of-war know of the movements of hostile vessels. The situation is different with cable communications, as a message forwarded that way can only reach a well-defined point. It can not be sent to any man-of-war, thus making the United States directly participant to a nonneutral act. The discrimination against Germany now supposed to exist in the United States' attitude is only apparent. It is the result of a legitimate act of war, that is, the cutting of German cables by a hostile force. It is in the order of things that the belligerent who has not been able to protect himself on that point should bear the consequences of it and it can not be the duty of a neutral power to reestablish between the belligerents a balance that has been destroyed by a legitimate act of war.

CLAUSSE.

BRITISH EMBASSY,
Washington, August 14, 1914.

SIR: I have the honor to recapitulate briefly the various points advanced by me in the course of conversations which I have had during the past few days with you and the Counsellor of the Department of State and in which I supported the contention of His Majesty's Government that the use of the wireless stations at

Sayville and Tuckerton for messages of an unneutral nature should not be reestablished.

1. The two wireless stations in question are under the direct control of the German Government and messages intercepted before the censorship was established indubitably show that they were in constant communication with German warships.

2. Information conveyed by wireless differs vastly from that conveyed by cable. A wireless message, from the very moment it is dispatched, is spread in countless directions and is conveyed to any number of ships over a wide area. A cable message can only be delivered at one well-known point. That point of destination is a tangible one and the enemy are at perfect liberty to attack it and cut off communications.

3. It would appear that the German Embassy contends that it is cut off entirely from communication with its Government. His Majesty's Embassy understands, however, that there are still cable routes open to them, via Italy, for instance. But even if this were not the case, the cutting of German cables is a perfectly legitimate act of war, which the German Embassy can not expect it to be the duty of a neutral to redress.

4. The further contention of the German Embassy that it is being discriminated against and that a cable message is on the same footing as a wireless message is incorrect. A cable message can not reach a warship. Any information which might be conveyed as to the movement of ships by cable takes a considerable number of hours to reach its destination. When information is ultimately sent to the ships, this information reaches them from the territory of the belligerent (by means of relays from Europe, which again take time—a matter of vital importance) and not direct from the territory of a neutral. A wireless message, on the other hand, sent from the Sayville or the Tuckerton stations is not only direct but immediate information conveyed to ships, merchantmen, and warships.

5. In short, the two German wireless stations above mentioned are in a position to impart direct and immediate information to the German fleet, to the great danger of British shipping, and render United States territory a base for direct military operations against their enemies.

I have, etc.,

COLVILLE BARCLAY.

(Ibid., pp. 671–672.)

Use of Government radio.—During the World War, 1914–1918, requests of private persons and of officials were received for the use of radio which was under Gov-

ernment control. Even when censorship was maintained it was not always easily possible to determine the correct course of action, but communication by neutral government radio with belligerent ships was usually prohibited. A case arising at San Juan was a subject of diplomatic correspondence in a note from the Secretary of State to the French ambassador.

WASHINGTON, *December 29, 1915.*

MY DEAR MR. AMBASSADOR: I have just received a report from the Navy Department stating that the United States naval radio station at San Juan was requested on December 7 by the French consular officer at that port to transmit a message to the French cruiser *Descartes* patrolling outside the port of San Juan. Upon the transmittal of the message being properly refused, the tug *Berwin* left the port and steamed out to the cruiser, near which she remained until after dark. The officer surmises that the French consul took this means of communicating his message to the French cruiser.

I am calling this matter to your attention informally in order to avoid, if possible, the necessity of bringing the matter to the attention of your Government in a formal manner for, as it is generally known, the Government has during the present war taken the attitude that belligerent cruisers may not use American coasts as sources of information to guide them in their belligerant operations. Such a practice would obviously transform American shores into bases of naval operations. If the facts turn out to be as I have described them, I would appreciate it if you could find it possible to have instructions issued to the commanders of French cruisers to desist from this method of obtaining information.

In this relation I desire to call your attention to a report which has been received from American authorities at San Juan that the same French cruiser has, since it arrived off the Porto Rican coasts, been very active in stopping all vessels leaving and approaching San Juan within the sight of the port, and on several occasions approaching well within the 3-mile limit, presumably for the purpose of observation. This practice, which has received the appellation of "hovering," has, as you may recall, been always regarded by this Government as inconsistent with the treatment to be expected from the naval vessels of a friendly power in time of war and as a vexatious menace to the freedom of American commerce. On account of the cordial relations existing between our Governments, I am sure that as a result of calling this matter to your attention, instructions will be issued to the French

ships to desist from a practice which is creating such a bad impression in Porto Rico and New York.

I am, etc.,

ROBERT LANSING.

(1915, For. Rel. Sup., pp. 881, 882.)

SOLUTION

(*b*) (2) The protest of state X against the toleration by state E of such use of radio by the commanding officer of the *King* is valid.

(*b*) (3) *Belligerent use of cables.*

Cable censorship.—Early in the World War the use of cables received attention from belligerents and from neutrals. In many businesses technical words were regularly used in time of peace in a sense that would not be clear to a person not familiar with the special business. An early telegram to the Secretary of State asks in regard to the use of the French cable between New York and Porto Rico:

HOUSTON, TEX., *August 5, 1914.*

Telegraph companies refuse to handle code messages for Porto Rico advising French cable New York to Porto Rico regulations demand plain language and full address. Must these revisions be complied with on messages from one part of United States to another? We, of course, considering Porto Rico United States territory and business in a sense interstate.

KIRBY LUMBER COMPANY.

(1914 For Rel. Sup., p. 503.)

The reply was:

DEPARTMENT OF STATE,
Washington, August 7, 1914.

Subject your telegram receiving attention to end that ordinary code messages between United States and Porto Rico may not be refused. Great number of questions suddenly arising out of European war require time for adjustment. You will be advised.

W. J. BRYAN.

(Ibid.)

Subsequently, September 1, 1914, advice was given that code messages would be transmitted.

The cable companies brought to the attention of officials of different governments that with the increased demand upon their lines for service the requirements imposed by censorship and other restrictions made use of the lines to maximum capacity difficult. The Western Union estimated that the requirement of full addresses and signatures might cut down the number of messages which could be transmitted by 50 per cent while doubling the cost to the public. The Department of State on September 26, 1914, telegraphed to the American ambassador in Great Britain to the following effect:

> The department has received a great many protests from commercial houses and boards of trade and transportation throughout the United States in regard to the suppression by British censors of cable communications to and from neutral countries. This considerably interferes with legitimate foreign commerce between the United States and neutral countries. You may present the matter to the British Foreign Office with the suggestion that the department deems it very desirable to discontinue suppressing harmless commercial cables. Another great hardship has been that when suppressions have been made the senders of cables have not been informed of nondelivery. This should also be remedied. The department is awaiting an early reply. (1914, For. Rel., Sup., p. 509.)

While the British Government on October 13 informed the American ambassador that instructions had been given to discontinue "the suppression of commercial telegrams between the United States and neutral countries," the censor might still pass on the bona fides of the communciation and was not under obligation to notify "the sender of nondelivery of stopped telegrams." Other states protested against the censorship, both at London and Paris. In a telegram of November 25, 1914, the American ambassador in Great Britain stated—

> Unless some understanding has been reached of which I have not been advised, British Government as a war measure has the [power] to suppress what messages it chooses that come over cables here; but criticism from many quarters is becoming so insistent that I hope some relaxing of rules will come. I am

convinced that no commercial considerations play any part in their suppression but only the autocratic methods of the War Department. (Ibid., p. 518.)

An understanding mitigating to some extent the rigors of the British censorship was reached on December 18, 1914.

Submarine cables.—Toward the end of the nineteenth century cable policies were in process of development in the states having possessions in different parts of the world. Easy communication was of great importance both in time of peace and in time of war. While the introduction of radio made cable communication relatively less important, the cables still served many purposes. Cables were regarded as of sufficient importance to receive much attention during the World War. Cables were lifted, diverted, and sometimes cut. Part VIII, Annex VII, of the treaty of Versailles deals with the disposition of more than 20,000 miles of submarine cables.

The early doctrine had inclined toward the exemption of cables because cables were of international utility. Gradually the necessity of censorship was recognized. Even with censorship, cables may serve as valuable means of keeping open communication upon matters not concerned directly with the war as in directing pre-war commerce.

The instructions for the Navy of the United States, June, 1917, in regard to the treatment of submarine cables were as follows:

Unless under satisfactory censorship or otherwise exempt, the following rules are established with regard to the treatment of submarine telegraph cables in time of war, irrespective of their ownership.

(*a*) Submarine telegraph cables between points in territory belonging to or occupied by the enemy or between such territory and territory of the United States are subject to such treatment as the necessities of war may require.

(*b*) Submarine telegraph cables between points in territory belonging to or occupied by the enemy and neutral territory may be interrupted within the territorial jurisdiction of the enemy or

at any point outside of neutral jurisdiction if the necessities of war require.

(*c*) Submarine cables connecting an occupied territory with a neutral territory shall not be seized or destroyed, except in the case of absolute necessity.

They must likewise be restored and compensation shall be fixed when peace is made.

(*d*) Submarine telegraph cables between two neutral territories shall be held inviolable and free from interruption. (Instructions for the Navy of the United States Governing Maritime Warfare, June, 1917, p. 20.)

Prior discussion.—In previous conferences at the Naval War College, as in 1904 and 1907, certain aspects of the use of submarine cables have received consideration. The regulations prescribed by belligerents during the World War were often detailed and sometimes said to be arbitrary. The United States regulations after entering the war in 1917 were very comprehensive in their restrictions. (1918 N. W. C., Int. Law Documents, pp. 172–192.) The use of submarine cables in neutral ports was usually subject to censorship and the neutral state should assume such degree of control as would assure maintenance of neutrality.

SOLUTION

(*b*) (3) The protest of state X against the toleration by state E of such use of the radio by the commanding officer of the *Prince* is valid.

The protest against the use of the submarine cable is not valid though censorship may be requested.